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13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA**

15 SEVERO JOHN HERNANDEZ,
16 UMEET NAND, KRISTOFER BARR,
17 on behalf of themselves and all others
18 similarly situated,

19 Plaintiffs,

20 v.

21 CHRISTENSEN BROTHERS
22 GENERAL ENGINEERING, INC., a
23 California Corporation; CALEB
24 CHRISTENSEN, and DOES 1-20,
inclusive

25 Defendants.

26 Case No. 5:22-cv-00836 AB (SPx)

27 **PLAINTIFFS' NOTICE OF
28 MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

29 Date: July 28, 2023

30 Time: 10:00 a.m.

31 Courtroom: 7B

32 Complaint Filed: March 17, 2021

33 Trial Date: None Set

34 Judge: Hon. André Birotte Jr.

35 Magistrate Judge: Hon. Sheri Pym

36 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
37 OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

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10 Attorneys for Plaintiffs SEVERO JOHN HERNANDEZ, KRISTOFER BARR,
11 and all other similarly situated persons

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PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 28, 2023, at 10:00 a.m., in
3 Courtroom 7B of the United States District Court for the Central District of
4 California, 350 West First Street, Los Angeles, California 90012, Plaintiffs Severo
5 John Hernandez, Umeet Nand, and Kristofer Barr (collectively, “Plaintiffs”), on
6 behalf of themselves and all others similarly situated, will move for an Order: (1)
7 granting preliminary approval of the Parties’ Stipulation of Class and PAGA
8 Settlement (“Settlement”); (2) granting conditional certification of the Settlement
9 Class; (3) appointing Class Counsel; (4) appointing the Class Representatives; (5)
10 appointing a Settlement Administrator; and (6) approving the form of the Class
11 Notice Packet (comprised of the Class notice and Request for Exclusion Form).
12 This Motion is made on the grounds that the Settlement is fair, adequate, and
13 reasonable given the relative strengths and weaknesses of the claims and defenses;
14 the risks, expense, complexity and likely duration of further litigation; the amount
15 offered in settlement; the experience and views of counsel; and the public policy in
16 favor of quieting litigation. This Motion is based upon the accompanying
17 Memorandum of Points and Authorities, the Declarations of Daniel J. Brown,
18 Ethan C. Surls, Sam Kim, Yoonis Han, Severo John Hernandez, Umeet Nand,
19 Kristopher Barr, and Jodey Lawrence and all exhibits attached thereto, and such
20 other oral argument and documentary evidence as may be presented to the Court at
21 the hearing of this Motion.

22
23 Dated: June 30, 2023

VERUM LAW GROUP, APC

24
25 By: /s/ Sam Kim
26 Sam Kim
27 Yoonis Han
28 Attorneys for Plaintiffs SEVERO
JOHN HERNANDEZ, UMEET
NAND, KRISTOFER BARR, and

PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
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1 all other similarly situated persons
2
3

4 Dated: June 30, 2023
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6

7 STANSBURY BROWN LAW, PC
8
9

10 By: /s/ Daniel J. Brown
11 Daniel J. Brown
12 Ethan C. Surls
13 Attorneys for Plaintiffs SEVERO
14 JOHN HERNANDEZ, KRISTOFER
15 BARR, and all other similarly
16 situated persons
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MEMORANDUM OF POINTS AND AUTHORITIES

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I. INTRODUCTION

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5

Plaintiffs Severo John Hernandez (“Plaintiff Hernandez”), Umeet Nand
6 (“Plaintiff Nand”), and Kristofer Barr (“Plaintiff Barr”) (collectively, “Plaintiffs”)
7 brings this Motion for Preliminary Approval of Class and Representative Action
8 Settlement (the “Motion”) to request that this Court grant preliminary approval of
9 the proposed class action settlement of wage and hour claims, including a claim
10 under the Private Attorneys General Act (“PAGA”), against Defendants
11 Christensen Brothers General Engineering, Inc. (“CBG”) and Caleb Christensen
12 (“Christensen”) (collectively “Defendants”) (collectively, Plaintiffs and
13 Defendants referred to hereinafter as the “Parties”). The basic terms of the
14 Stipulation of Class and PAGA Settlement (the “Settlement” or “Settlement
15 Agreement”)¹ provide for the following:

16

- 17 1. Defendants to pay \$250,000.00 to establish the Maximum Settlement
18 Amount.
- 19 2. A Net Settlement Amount derived from the Maximum Settlement
20 Amount (less the amounts specified hereafter) from which
21 approximately 340 Class Members will be allocated a pro rata share
22 for Participating Member Payments according to the number of Class
23 Workweeks each Class Member worked during the Class Period.
- 24 3. An award of attorneys’ fees not to exceed 25% of the Maximum
25 Settlement Amount (equal to \$62,500.00), and reimbursement for
26 costs and expenses up to \$100,000.00, subject to Court approval.

27

28

¹ A true and correct copy of the fully-executed “Stipulation of Class and PAGA Settlement,” is attached as Exhibit A to the Declaration of Daniel J. Brown in Support of Plaintiffs’ Motion for Preliminary Approval of Class and Representative Action Settlement (“Brown Decl.”), ¶ 18, filed concurrently herewith. Unless otherwise noted, all exhibits cited herein are attached to the Brown declaration. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms are used in the Settlement.

1 4. The Enhancement Payment to each of the three Plaintiffs in the
2 amount of \$4,000.00 (totaling \$12,000.00) for the time, effort, and risk
3 in prosecuting the Action.

4 5. The General Release Payment to each of the three Plaintiffs as
5 follows: (a) \$4,000.00 to Plaintiff Hernandez; (b) \$4,000.00 to
6 Plaintiff Barr; and (c) \$2,000.00 to Plaintiff Nand. The General
7 Release Payment is for the execution of a general release and waiver
8 of the California Civil Code § 1542, including the release all rights
9 under section 1542.

10 6. An allocation of Settlement Administration Costs not to exceed
11 \$6,000.00.

12 7. An allocation of \$5,000.00 for settlement of claims for civil penalties
13 under the California Private Attorneys General Act of 2004, California
14 Labor Code § 2698 *et seq.* (“PAGA”), of which seventy-five percent
15 (75%) of this amount, or \$3,750.00, will be paid to the California
16 Labor and Workforce Development Agency (“LWDA”) and the
17 remaining twenty-five percent (25%), or \$1,250.00, will be distributed
18 to Aggrieved Employees based on the number of PAGA Workweeks
19 worked during the PAGA Period.

20 The Settlement Agreement was reached following over two and half years
21 of extensive litigation, over twenty-two depositions, a motion for class
22 certification, expert analysis of the claims for trial, including both the class and
23 representative claims, and two separate private mediations – the first with the Hon.
24 Ronald M. Sabraw (Ret.) on February 9, 2022, and the second with Nikki Tolt, Esq.
25 on May 4, 2023.

26 Plaintiffs and Class Counsel believe that the terms are fair to Class Members
27 and Aggrieved Employees, and resolving this case will obviate years of continued
28 litigation. As explained in this Motion, the proposed Settlement is fair, adequate,

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1 and falls within the range of reasonableness for preliminary approval. As such,
2 Plaintiffs and Class Counsel respectfully request that this Court enter an order:

- 3 1. Granting preliminary approval of the Settlement Agreement;
- 4 2. Granting conditional certification of the Settlement Class;
- 5 3. Appointing Stansbury Brown Law, PC and Verum Law Group, APC,
6 as Class Counsel;
- 7 4. Appointing Plaintiffs Hernandez, Barr, and Nand as the Class
8 Representatives;
- 9 5. Appointing Phoenix Settlement Administrator as the Settlement
10 Administrator;
- 11 6. Approving the Notice Packet (comprised of the class notice and
12 Request for Exclusion form) that will be sent to the Settlement Class
13 and Aggrieved Employees; and the proposed timeline for
14 administration of the Settlement; and
- 15 7. Setting a final approval hearing date.

16 **II. SUMMARY OF THE LITIGATION**

17 The Settlement aims to resolve a proposed class and representative action
18 lawsuit against Defendants.

19 **A. Procedural History**

20 Plaintiff Nand filed a putative class action complaint (“Nand Complaint”)
21 against Defendant CBG on November 18, 2020, in Los Angeles County Superior
22 Court, Case No. 20STCV44100, which alleged causes of action for: (1) minimum
23 wage violations; (2) failure to pay all overtime wages; (3) meal period violations;
24 (4) rest period violations; (5) failure to reimburse for necessary business expenses;
25 (6) wage statement violations; (7) waiting time penalties; (8) unfair competition;
26 and, (9) failure to pay prevailing wages. *See* Declaration of Daniel J. Brown In
27 Support of Plaintiffs’ Motion for Preliminary Approval of Class and Representative
28 Settlement (“Brown Decl.”), ¶ 7. Plaintiff Nand filed a First Amended Class and

1 Representative Action Complaint (“Nand FAC”) on March 23, 2021, to add an
2 additional cause of action for civil penalties under the Private Attorneys General
3 Act (“PAGA”) pursuant to Labor Code Sections 2698 *et seq.* based on claims
4 asserted in the PAGA letter Plaintiff Nand submitted to the LWDA on November
5 17, 2020 (“Nand PAGA Letter”). *See* Exh. D, Brown Decl., ¶ 7. The Nand
6 Complaint, Nand FAC, and Nand PAGA Letter are referred to herein as the “Nand
7 Action.”

8 Plaintiff Hernandez filed a class action complaint (“Hernandez Complaint”)
9 against Defendant CBG on March 17, 2021, in San Bernardino Superior Court,
10 Case No. CIVSB2107947, which alleges causes of action for: (1) minimum wage
11 violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest
12 period violations; (5) wage statement violations; (6) waiting time penalties; (7)
13 unfair competition; and, (8) failure to pay prevailing wages. *See* Brown Decl., ¶ 8.
14 Plaintiff Hernandez filed a First Amended Class and Representative Action
15 Complaint (“Hernandez FAC”) on September 10, 2021, to add an additional cause
16 of action for civil penalties under the PAGA based on claims asserted in the PAGA
17 letter Plaintiff Hernandez submitted to the LWDA on or about July 1, 2021
18 (“Hernandez PAGA Letter”). *See* Exh. E, Brown. Decl., ¶ 8.

19 On March 27, 2022, Plaintiff Nand and Defendant CBG entered into a
20 stipulation to dismiss the Nand Complaint without prejudice for the purpose of
21 coordinating/consolidating the Nand Complaint and the Hernandez Complaint in
22 the San Bernardino Superior Court. Brown. Decl., ¶ 9. On or about March 18,
23 2022, Plaintiff Barr submitted a PAGA letter to the LWDA and on or about March
24 21, 2022, Plaintiff Barr submitted an amended PAGA letter to the LWDA
25 (collectively, “Barr PAGA Letter”). *See* Exhs. F and G, Brown. Decl., ¶ 9.

26 On or about April 21, 2022, Plaintiff Hernandez filed a Second Amended
27 Class and Representative Action Complaint (“SAC”), which served to: (i) include
28 Plaintiff Nand as a named Plaintiff; (ii) include Plaintiff Barr as a named Plaintiff;

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1 (iii) include Defendant Christensen as a named Defendant; and (iv) add an
2 additional cause of action for failure to pay overtime and minimum wage under the
3 Fair Labor Standards Act (“FLSA”). Brown Decl., ¶ 10.

4 On May 18, 2022, Defendants filed a Notice of Removal of Action Pursuant
5 to 28 U.S.C. §§ 1331, 1441 and 1446. Brown Decl., ¶ 11; Dkt No. 1.

6 On September 28, 2022, pursuant to stipulation and Court Order (Dkt. Nos.
7 21 - 22), Plaintiffs filed the operative Third Amended Class and Representative
8 Action Complaint (“TAC”), which (i) redefined the putative class to include only
9 “Field Employees” (defined below) and (ii) contained additional factual allegations
10 regarding the facially deficient wage statements. Brown Decl., ¶ 12; Dkt. No. 23.
11 The: (i) Nand Complaint; (ii) Nand FAC; (iii) Nand PAGA Letter; (iv) Hernandez
12 Complaint; (v) Hernandez FAC; (vi) Hernandez PAGA Letter; (vii) Barr PAGA
13 Letter (viii) SAC; and, (ix) TAC are referred to collectively herein as the
14 “Lawsuit.”

15 On November 23, 2023, Plaintiffs filed their Motion of Class Certification
16 Under Rule 23, Conditional Collective Action Certification, and Dissemination of
17 Notice Pursuant to 29 U.S.C. § 216(B) (“Class Certification Motion”) seeking to
18 certify ten subclasses and one FLSA collective action class all comprised of CBG’s
19 Field Employees, defined as “all of Defendants’ non-exempt employees in the
20 following positions: Foreman, Operator, Pipelayer, Laborer, Cement Mason,
21 Teamster, Driver, and similarly titled positions” who worked for Defendants from
22 November 18, 2016, up to and through the date of the order granting class
23 certification. Dkt. No. 27; Brown Decl., ¶ 13. On January 23, 2023, Defendants
24 filed their Opposition to Plaintiffs’ Motion for Class Certification. Dkt. Nos. 33;
25 Brown Decl., ¶ 13. On February 13, 2023, Plaintiffs filed their Reply In Support of
26 Motion for Class Certification Under Rule 23, Conditional Collective Action
27 Certification, and Dissemination of Notice Pursuant to 29 U.S.C. § 216(B). Dkt.
28 Nos. 34; Brown Decl., ¶ 13. On March 25, 2023, the Court heard oral argument.

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1 Brown Decl., ¶ 13.

2 On April 24, 2023, the Court issued its Order Denying Plaintiffs' Motion for
3 Class Certification and Certification of FLSA Collective Action in its entirety
4 finding (i) Plaintiffs lack standing to pursue the "facially deficient" wage statement
5 claims and therefore could not certify any subclasses based on those claims, (ii)
6 Plaintiffs failed to establish that Defendants engaged in any uniform practices upon
7 which their theory of commonality for all the subclasses depends, and (iii) Plaintiffs
8 failed to satisfy the more stringent second stage of the FLSA collective action
9 certification analysis to certify the FLSA subclass. Dkt. No. 41; Brown Decl., ¶ 14.

10 On or about June 29, 2023, the Parties submitted the Stipulation to Dismiss
11 the Individual and FLSA Claims with Prejudice with a Proposed Order. Brown
12 Decl. ¶ 15.

13 **B. Discovery and Data Analysis**

14 The Parties have engaged in multiple rounds of formal discovery including:
15 (i) Plaintiff Nand propounding discovery in the Nand Action, (ii) the Parties
16 propounding multiple rounds of written class certification discovery in the Action,
17 (iii) depositions of each named Plaintiff, (iv) depositions of CBG's Federal Rule of
18 Civil Procedure ("FRCP"), Section 30(b)(6) witnesses, and (v) the depositions of
19 at least 19 Class Members that provided declarations in support and against
20 Plaintiffs' Motion for Class Certification. Brown Decl., ¶ 16.

21 Through this discovery, Plaintiffs sought and obtained, employee
22 handbooks, various relevant policies and procedures, contact information for
23 prospective class members, and Class Member time and pay records. Brown Decl.,
24 ¶ 16.

25 As part of Plaintiffs' Motion for Class Certification, Plaintiffs retained Ms.
26 Laura R. Steiner, MPA and Mr. Gabriel Anello of Employment Research
27 Corporation to conduct a detailed review of time and pay data produced by
28 Defendants to determine: (1) the total number of Field Employees who worked for

1 Defendants during the Class Period; (2) the total number of Field Employees
2 currently employed by Defendants; (3) the total number of weekly pay periods and
3 shifts worked by all Field Employees during the Class Period; (4) the total number
4 of weekly pay periods worked by all Field Employees during the PAGA Period;
5 (5) the average and median hourly rate of pay; (6) various shift lengths; and, (7)
6 the number of meal period violations based on Field Employees' meal period
7 records. Brown Decl., ¶ 17.; Dkt No. 27-2, Exh. 58-59 (Ms. Steiner's and Mr.
8 Anello's declarations submitted in Support of Plaintiffs' Class Certification
9 Motion).

10 Moreover, prior to both of the Parties' mediations (discussed below),
11 Plaintiffs retained Mr. Jarrett Gorlick, a Partner and Senior Data Analyst with
12 Berger Consulting Group, to conduct an in-depth damages analysis based on the
13 claims and theories alleged in the TAC and Class Certification Motion. Brown
14 Decl., ¶ 17.

15 **C. Mediations**

16 On February 10, 2022, the Parties attended a mediation with the Hon. Ronald
17 M. Sabraw (Ret), a well-respected mediator for wage and hour claims. Brown
18 Decl., ¶ 18. During the mediation, as well as before, the Parties exchanged their
19 respective positions on the legal theories and claims in the Action. *Id.* The Parties
20 were unable to reach a resolution at the mediation. *Id.*

21 On April 28, 2023, after the Court denied Plaintiffs' Motion for Class
22 Certification, the Parties attended a second mediation with Ms. Nikki Tolt, Esq.,
23 another well-respected mediator for wage and hour claims. Brown Decl., ¶ 18.
24 While the Parties did not reach a settlement at the end of mediation, the Parties
25 continued to engage in settlement discussions with the assistance of Ms. Tolt, while
26 also continuing to actively litigate the Action, and several weeks later were able
27 to reach a class and representative wide global resolution, which included the
28 material terms of the Settlement. *Id.*

1 Over the next several weeks, the Parties continued to draft and negotiate the
2 long-form Settlement, which was finalized and mutually executed on June 30, 2023
3 after resolving numerous disputes over the terms of the Settlement. *See* Exhibit A
4 attached to Brown Decl., ¶ 18, Settlement. Lastly, Plaintiffs submitted the
5 Settlement to the LWDA pursuant to Labor Code § 2699(1)(2) on June 30, 2023.
6 *See* Exhibit H, Brown Decl., ¶ 18.

7 **III. SUMMARY OF SETTLEMENT TERMS**

8 Class Counsel believes that the Settlement submitted to this Court for
9 preliminary approval is a fair and reasonable result for the Settlement Class. In
10 exchange for a release, limited to “any and all wage and hour and/or wage payment
11 claims, obligations, demands, actions, rights, causes of action, and liabilities
12 (including state and federal statutory and common law claims) that accrued or arose
13 during the Class Period that were alleged, or reasonably could have been alleged,
14 based on the facts stated in the operative TAC and/or Plaintiffs’ respective PAGA
15 Letters,” the Settlement commits Defendants to pay \$250,000.00 (“Maximum
16 Settlement Amount”). Settlement ¶ 3. This is a non-reversionary Settlement.
17 Settlement ¶ 3(D). Defendants will also pay their portion of payroll taxes
18 separately and not from the Maximum Settlement Amount. Settlement ¶ 3(E).

19 The Net Settlement Amount is the Maximum Settlement Amount, less the
20 Enhancement Payments, General Release Payments, payment to the LWDA for its
21 share of PAGA civil penalties, Class Counsel’s attorneys’ fees and costs award,
22 and costs and fees of settlement administration. Settlement ¶ 4(A).

23 The Enhancement Payments are the Court approved payments of \$4,000 to
24 each named Plaintiff as the Class Representatives for a total of \$12,000, in addition
25 to their Participating Member Payments and General Release Payment, in
26 recognition of their efforts and risks in assisting with the prosecution of the Action.
27 Settlement ¶ 3(D)(iv).

28 The General Release Payment is the Court approved payments of \$4,000 to

1 Plaintiff Hernandez, \$4,000 to Plaintiff Barr, and \$2,000 to Plaintiff Nand for a
2 total of \$10,000 in exchange for their execution of a general release of known and
3 unknown claims and waiver pursuant to California Civil Code § 1542. Settlement
4 ¶ 3(D)(v).

5 The PAGA Payment is the \$5,000.00 allocated to penalties under the PAGA,
6 of which \$3,750.00 shall be paid by the Settlement Administrator directly to the
7 LWDA (“LWDA Payment”); and the remaining \$1,250.00 shall be distributed to
8 Aggrieved Employees as the “PAGA Payment” based on their proportional number
9 of weekly pay periods worked for Defendants during the PAGA Period (“PAGA
10 Workweek”). Settlement ¶¶ 3(D)(vii), 4(A)(i).

11 The Class Counsel’s costs are the expenses and costs incurred by Class
12 Counsel in connection with litigation of the Action, which are not to exceed
13 \$100,000.00 and are paid from the Maximum Settlement Amount. Settlement ¶
14 3(D)(vi).²

15 The Class Counsel’s fees are the attorneys’ fees for Class Counsel’s
16 litigation and resolution of the Action, which are not to exceed 25% of the
17 Maximum Settlement Amount, or \$62,500.00 and are paid from the Maximum
18 Settlement Amount. Settlement ¶ 3(D)(vi).

19 The Settlement Administration costs are the costs payable from the
20 Maximum Settlement Amount to the Settlement Administrator for administering
21 this Settlement, which are not to exceed \$6,000.00. Settlement ¶ 3(D)(iii).

22

23 ² Should the Court grant preliminary approval, Class Counsel will seek an award
24 of attorneys’ fees and verified litigation costs from the common fund when seeking
25 final approval. Moreover, as part of the motion for final approval, Plaintiffs will
26 provide the Court with the information necessary for the Court to conduct a lodestar
27 cross-check to determine the reasonableness of the fees requested pursuant to
28 *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal. 5th 480. Moreover, Class Counsel
will provide under declaration their itemized cost lists for the Court’s review.
Brown Decl., ¶ 34.

1 If the Court grants Final Approval, in exchange for the consideration set forth
2 in the Settlement, the Class Members who do not opt out of the settlement
3 (“Settlement Class Members”), including Plaintiffs, will release Defendant CBG
4 all its affiliated parties and entities, including its past and present affiliates, parents,
5 subsidiaries, predecessors, owners, successors, shareholders, divisions, and each of
6 these entities’ past and present directors, officers, managers agents, employees,
7 agents, partners, benefit plans, shareholders, and representatives, and Defendant
8 Caleb Christensen (“Released Parties”) from any and all wage and hour and/or
9 wage payment claims, obligations, demands, actions, rights, causes of action, and
10 liabilities (including state and federal statutory and common law claims) that
11 accrued or arose during the Class Period that were alleged, or reasonably could
12 have been alleged, based on the facts stated in the operative TAC and/or Plaintiffs’
13 respective PAGA Letters (“Released Class Claims”).³ Settlement ¶¶ 2(A)-(B). In
14 addition, in exchange for the PAGA Payment set forth in the Settlement, Aggrieved
15 Employees⁴ and Plaintiffs as representatives of the State of California and on behalf
16 of the LWDA, will release and discharge Defendants from any and all claims for
17 PAGA civil penalties that accrued or arose during the PAGA Period that were
18 alleged, or reasonably could have been alleged, based on the facts stated in the
19 operative TAC and/or Plaintiffs’ PAGA Letters (“Released PAGA Claims”).⁵
20 Settlement ¶ 2(C). Aggrieved Employees will be bound by the Judgment entered
21 by the Court as to the Released PAGA Claims and will not be able to opt-out of the
22 release of Released PAGA Claims regardless of whether they opt-out of the class
23 portion of the Settlement. *Id.*

24

25 ³ The full scope of the Released Class Claims is listed in the Settlement in ¶ 2(B).

26 ⁴ Aggrieved Employees are defined as all current and former non-exempt
27 employees of Defendants who worked for Defendants at any time during the period
28 of November 17, 2019, up to the earlier of (i) the date the Court grants Preliminary
Approval or (ii) August 30, 2023 (the “PAGA Period”). Settlement ¶ 2(C).

29 ⁵ The full scope of the Released PAGA Claims is listed in the Settlement in ¶ 2(C).

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1 Only Plaintiffs will agree to a general release of known and unknown claims
2 and waiver pursuant to California Civil Code § 1542. Settlement ¶ 2(D).

3 The Parties agreed to use Phoenix Settlement Administrators as the
4 Settlement Administrator. Settlement ¶ 3(D)(iii).

5 Finally, based on the terms of the Settlement, the Net Settlement Amount is
6 estimated at \$55,750.00.⁶ Brown Decl., ¶ 19. Based on the estimated Net
7 Settlement Amount divided by the Settlement Class of 340 individuals, the average
8 recovery is \$163.97. *Id.*

9 **IV. CLASS CERTIFICATION IS APPROPRIATE UNDER RULE 23**

10 **A. FRCP Rule 23(A) and Rule 23 (B) Requirements are Met**

11 Through this Motion, Plaintiffs request that the Court make appropriate
12 findings and conditionally certify the Settlement Class in this action for purposes
13 of settlement only. To certify a class, a district court must find that the proposed
14 class meets the requirements for class certification. *See Amchem Prods. v. Windsor*,
15 521 U.S. 591, 620 (1997). The Court's original denial of class certification has no
16 bearing on the appropriateness of the Court conditionally certifying the proposed
17 Class for settlement purposes. This is because an order denying class certification
18 is preliminary in nature and a lesser standard for certification is required for
19 settlement. *Officers for Justice v. Civil Service Com'n of City and County of San*
20 *Francisco*, 688 F.2d 615, 633 (9th Cir. 1982) ("before entry of a final judgment on
21 the merits, a district court's order respecting class status is not final or irrevocable,
22 but rather, it is inherently tentative.")

23 Indeed, courts routinely find class certification appropriate for settlement
24 purposes even after an initial contested motion for class certification is denied. *See*
25 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1805-08, fn. 19 (holding trial court
26 did not abuse its discretion in certifying a nationwide class for settlement purposes,

28 ⁶ The numeric breakdown of the Settlement Terms is also listed in Brown Decl., ¶ 19 for ease of reference.

1 after declining to certify a national class in a contest class certification motion
2 because it is appropriate to apply “a lesser standard of scrutiny [of class
3 certification] for settlement cases.’); *Glob. Mins. & Metals Corp. v. Superior Ct.*,
4 113 Cal. App. 4th 836, 859, (2003) (“it is well established that trial courts should
5 use different standards to determine the propriety of a settlement class, as opposed
6 to a litigation class certification. Specifically, ***a lesser standard of scrutiny is used***
7 ***for settlement cases.*** [citation]. The reason for this is that no trial is anticipated in
8 a settlement class case, so the case management issues inherent in the ascertainable
9 class determination need not be confronted.”) (emphasis added.); *Amchem Prod.,*
10 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for
11 settlement-only class certification, a district court need not inquire whether the
12 case, if tried, would present intractable management problems.”)

13
14 As will be discussed below, based on Plaintiffs’ allegations in the TAC, the
15 Settlement Class meets all four prerequisites of Rule 23(a) class certification –
16 numerosity, commonality, typicality, and adequacy of representation – in addition
17 to the requirements of Rule 23 (b)(3) – predominance of common issues and
18 superiority of the class action device. Therefore, certification should be granted for
19 settlement purposes.

20 **B. The Requirements of FRCP Rule 23 (A) Are Met**

21 *1. The Settlement Class Satisfies Numerosity*

22 Rule 23(a)(1) requires that a proposed class be so numerous that joinder of
23 all class members be impracticable. See Fed. R. Civ. P. 23(a)(1). Plaintiffs need
24 not show that the number is so large that it would be impossible to join every class
25 member. *Gripenstraw v. Blazin’ Wings, Inc.*, 2013 U.S. Dist. LEXIS 179214, *9
26 (E.D. Cal. 2013). Here, the Settlement Class is clearly large enough to make joinder
27 impracticable, as Defendants have indicated that it consists of approximately 340
28 individuals. Settlement ¶ 3(D)(i); *see Gay v. Waiters’ & Dairy Lunchmen’s Union*,

549 F.2d 1330 (9th Cir. 1977) (finding numerosity for a class with 110 potential class members).

2. The Settlement Class Satisfies Commonality

The second Rule 23(a) requirement is commonality, which is satisfied “if there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). To meet this requirement, there must be “shared legal issues” or “a common core of salient facts.” *Staton v. Boeing, Co.*, 327 F.3d 938, 953 (9th Cir. 2003). Courts have construed this commonality requirement permissively, and the Ninth Circuit has stated that “[a]ll questions of fact and law need not be common to satisfy the rule.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). “Commonality is generally satisfied where, as in this case, ‘the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.’” *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1121 (E.D. Cal. 2009) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)).

In the instant case, Plaintiffs' allegations present common legal and factual questions of, *inter alia*, whether Defendants applied the same compensation, timekeeping, meal period, rest period, wage statement, and reimbursement policies to all Class Members; whether those policies or their implementation resulted in Labor Code violations; whether Defendants' conduct was intentional; and, whether Class Members are entitled to statutory and civil penalties. *See* TAC, Dkt. No. 23.

3. Plaintiffs Satisfy the Typicality Element

Typicality exists where “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23 (a)(3). The Court does not, however, “need to find that the claims of the purported class representative[s] are identical to the claims of the other class members.” *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 649 (C.D. Cal. 1996). The Ninth Circuit further stated that “[u]nder the rule’s permissive standards, representative claims are

1 ‘typical’ if they are reasonably coextensive with those absent class members; they
2 need not be substantially identical.” *Hanlon*, 150 F.3d at 1020.

3 Here, Plaintiffs allege that they and class members were subject to
4 Defendants’ common policies and practices, including: (a) not compensating for
5 work performed prior to the start of their scheduled shift and after the end of their
6 scheduled shift; (b) otherwise underreporting time worked for compensation
7 purposes; (c) not paying all prevailing wages owed; (d) not providing Class
8 Members all legally required meal periods, or paying premium pay in lieu thereof;
9 (e) not authorizing Class Members all rest periods or paying premium pay in lieu
10 thereof; (f) not reimbursing Class Members for all business expenses incurred; (g)
11 not providing accurate, itemized wage statements with all necessary information;
12 and, (h) not paying Class Members all wages owed at the time of separation of
13 employment. *See Declaration of Severo John Hernandez In Support of Preliminary*
14 *Approval of Class and Representative Action Settlement (“Hernandez Decl.”), ¶ 2;*
15 *Declaration of Umeet Nand In Support of Preliminary Approval of Class and*
16 *Representative Action Settlement (“Nand Decl.”), ¶ 2;* and, *Declaration of*
17 *Kristofer Barr In Support of Preliminary Approval of Class Action Settlement*
18 *(“Bar Decl.”), ¶¶ 2 - 3.*

19 Plaintiffs’ alleged injuries, claims, and relief sought are typical of those of
20 the class as they arise out of Defendants’ common course of conduct that would
21 entitle Class Members to similar relief. As such, Plaintiffs’ representative claims
22 and legal theories are co-extensive with those of the Class, and therefore, the
23 typicality requirement under Fed. R. Civ. Proc. 23(a)(3) is satisfied.

24 *4. Plaintiffs and Class Counsel Satisfy Adequacy*

25 The final Rule 23(a) requirement asks whether “the representative parties
26 will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).
27 This requirement is satisfied if: (1) the proposed representative plaintiff does not
28

1 have conflicts of interest with the proposed class, and (2) plaintiff is represented by
2 qualified and competent counsel. See *Hanlon*, 150 F.3d at 1020.

3 The first prong of the adequacy test requires “that the suit not be collusive
4 and plaintiff’s interests not be antagonistic to those of the remainder of the class.”
5 *In re Surebeam Corp. Secs. Litig.*, 2003 U.S. Dist. LEXIS 25022, *16 (S.D. Cal.
6 2003); see *Lou v. Ma Labs., Inc.*, 2014 U.S. Dist. LEXIS 2665, *5 (N.D. Cal. 2014).
7 Here, there is no evidence of antagonism between Plaintiffs’ interests and those of
8 the Settlement Class. Plaintiffs demonstrate their ability to advocate for the
9 interests of the class by initiating this litigation, gathering documents and
10 information, preparing for and having their depositions taken, and obtaining a fair
11 settlement on behalf of Settlement Class Members. See Brown Decl., ¶ 31;
12 Hernandez Decl., ¶¶ 4 - 5; Nand Decl., ¶ 2; Barr Decl., ¶¶ 2 - 3.
13

14 As to the second prong, Class Counsel’s extensive experience in class action
15 litigation makes them adequate Class Counsel. Brown Decl., ¶¶ 3 - 6; Declaration
16 of Sam Kim In Support of Plaintiffs’ Motion for Preliminary Approval of Class
17 and Representative Action Settlement (“Kim Decl.”), ¶¶ 3 - 8; Declaration of Ethan
18 C. Surls In Support of Plaintiffs’ Motion for Preliminary Approval of Class and
19 Representative Action Settlement (“Surls Decl.”), ¶¶ 3- 6; Declaration of Yoonis
20 Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class and
21 Representative Action Settlement (“Han Decl.”) ¶¶ 3 - 8. Class Counsel have
22 expended considerable time and effort on this case and will continue to do so
23 through final approval. Specifically, Class Counsel conducted extensive
24 investigation of the factual issues, including reviewing documents from
25 Defendants, interviewing and obtaining declarations from Class Members,
26 deposing Defendants’ representatives, deposing Class Members, performing a
27 damages analysis, preparing and participating in two mediations after performing
28

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1 a critical review of the claims and defenses, and moving for class certification. *See*
2 *generally*, Brown Decl.

3 Plaintiffs have and will continue to fairly and adequately protect the Class’
4 interests in good faith and should be appointed Class Representatives. Further,
5 Class Counsel have demonstrated throughout the litigation that they are qualified,
6 adequate counsel, warranting appointment as Class Counsel.

7 **C. The Requirements of FRCP Rule 23(B)(3) Are Met**

8 In addition to the Rule 23(a) requirements, a district court must also find that
9 common issues of law or fact “predominate over any questions affecting only
10 individual members.” Fed. R. Civ. P. 23(b)(3).

11 Plaintiffs contend their claims are based on Defendants’ common, class-wide
12 policies and procedures, and that liability may accordingly be determined on a class
13 wide basis, without dependence on individual assessments of liability. See *Brinker*
14 *Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1033 (2012) (“*Brinker*”) (“Claims
15 alleging that a uniform policy consistently applied to a group of employees is in
16 violation of the wage and hour laws are of the sort routinely, and properly, found
17 suitable for class treatment.”). As the TAC reveals, Defendants’ alleged liability
18 stems from policies and practices that applied to a larger group of employees other
19 than just Plaintiffs.

20 With respect to Plaintiffs’ failure to pay all wages claim, Plaintiffs alleged
21 that: (1) Defendants failed to compensate the Class for all time worked, including
22 pre-shift and post-shift work and that this practice lead to unpaid minimum wages,
23 straight time wages, overtime wages, and prevailing rate wages; and (2) Defendants
24 further failed to pay Class Members all prevailing wages owed by paying Class
25 Members at a lower prevailing wage rate than required according to the work
26 performed, and in other instances, paying Class Members at their non-prevailing
27 wage straight-time rate even when Class Members worked on prevailing wage
28 jobs. Brown Decl., ¶¶ 22 - 23. Common questions predominate over individual

1 inquiries because Defendants' timekeeping policies and practices applied to the
2 Class, allowing the Court to resolve in one proceeding whether such practices were
3 unlawful. *See, e.g., Santillan v. Verizon Connect, Inc.*, No. 3:21-CV-1257-H-KSC,
4 2022 WL 4596574, at *3 (S.D. Cal. June 13, 2022) (certifying an off-the-clock
5 claim); *Wood v. Granite Construction Company, et al.*, CIV-S-03-2592-DFL-PAN,
6 2005 WL 8176551 (E.D. Cal. March 11, 2005) (certifying a prevailing wage
7 claim).

8 With respect to the meal and rest period claims, Plaintiffs allege that
9 Defendants did not provide compliant meal periods under *Brinker*, because: (1)
10 first meal periods were not always provided and to the extent they were provided,
11 they were provided *after* the fifth hour of work when including pre-shift work; and
12 (2) second meal periods were not provided (nor scheduled) for shifts greater than
13 10-hours. Brown Decl., ¶¶ 24 – 25. Plaintiffs also allege that Defendants did not
14 provide compliant rest periods under *Brinker* because rest periods were not
15 authorized (nor scheduled). *Id.* Plaintiffs' primary theory of liability for these two
16 claims arises from an alleged common practice that applied to all Class Members,
17 and therefore gives rise to class questions. *See, e.g., Escano v. Kindred Healthcare*
18 *Operating Co.*, 2013 U.S. Dist. LEXIS 29899, *30-31 (C.D. Cal. 2013). Moreover,
19 the class questions arising out of these claims predominate over individual inquiries
20 because Defendants' meal and rest period practices allegedly applied to the class
21 as a whole, allowing the Court the ability to resolve in one proceeding whether such
22 practices were unlawful.

23 With respect to the reimbursement claim, Plaintiffs contend that Defendants,
24 as part of uniform policy and practice, did not reimburse employees for (i) cell-
25 phone usage (ii) work boots (iii) safety vests, and/or (iv) hard hats under Labor
26 Code § 2802. Brown Decl., ¶ 26.

27 With respect to the accurate itemized wage statement claim, Plaintiffs allege
28 a class-wide stand-alone wage statement claim for Defendants' alleged failure to

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1 include the inclusive dates of the period for which the employee is paid and the
2 name and address of the legal entity that is the employer. Labor Code § 226; Brown
3 Decl., ¶ 27. Plaintiffs also allege on a class wide basis derivative wage statement
4 violations based on Defendants alleged failure to pay all wages earned. *Id.*
5 Common questions predominate here since Defendants' wage statements "follow
6 a uniform format," and Defendants' "knowledge of any inaccuracies in its wage
7 statements can be determined on a class-wide basis." *Bernstein v. Virgin Am., Inc.*,
8 2016 U.S. Dist. LEXIS 154326, *42 (N.D. Cal. 2016). The Court can decide in one
9 proceeding whether Defendants are liable to all Class Members for violations.

10 Based on the foregoing alleged violations, Plaintiffs alleged derivative
11 claims that Defendants failed to maintain accurate records in accordance with
12 Labor Code § 1174, and that Defendants failed to pay all wages due upon
13 separation of Plaintiffs' and class members' employment in accordance with Labor
14 Code §§ 201-203. Brown Decl., ¶ 28. As these claims are derivate of the other class
15 wide claims, common questions predominate with this claim as well.

16 Additionally, the class action device proposed herein is "superior to other
17 available methods for the fair and efficient adjudication of the controversy." Fed.
18 R. Civ. P. 23(b)(3). Conditional certification of the Settlement Class will allow
19 Class Members' claims to be fairly, adequately, and efficiently resolved to a degree
20 that no other mechanism or forum would provide. As in *Hanlon*, the alternative
21 methods of resolution are individual claims for relatively small amounts of
22 damages. *Hanlon*, 150 F.3d at 1019-20; *see Smith v. Microsoft Corp.*, 297 F.R.D.
23 464, 468-69 (S.D. Cal. 2014). These claims "would prove uneconomic for
24 potential plaintiffs' because 'litigation costs would dwarf potential recovery.'" *Moore v. Fitness Int'l, LLC*, 2013 U.S. Dist. LEXIS 87782, *19 (S.D. Cal. 2013)
25 (citation omitted).

26 Finally, no issues of manageability would preclude certification of the
27 Settlement Class. As stated, a court faced with a request for a settlement-only class

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1 like this one need not inquire whether the case would present intractable problems
2 of trial management, even though other requirements under Rule 23 must still be
3 satisfied. See, e.g., *Lazarin v. Pro Unlimited, Inc.*, 2013 U.S. Dist. LEXIS 97213,
4 *15 (N.D. Cal. 2013). As discussed herein, the disposition of the Action through
5 implementation of the terms of the proposed Settlement is efficient and
6 manageable.

7 **V. CONDITIONAL CERTIFICATION IS APPROPRIATE**

8 Rule 23(e) requires that the court find a class settlement to be fair, reasonable
9 and adequate before entering preliminary or final approval. The primary concern
10 of Rule 23(e) is the protection of Class Members whose rights may not have been
11 given adequate consideration during the settlement negotiations. *Reed v. 1-800*
12 *Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255, *12 (S.D. Cal. 2014). Courts balance
13 several factors in determining whether a settlement is fair, adequate and reasonable,
14 in compliance with Rule 23(a), such as “the strength of plaintiffs’ case; the risk,
15 expense, complexity, and likely duration of further litigation; the risk of
16 maintaining class action status throughout the trial; the amount offered in
17 settlement; the extent of discovery completed, and the stage of the proceedings; the
18 experience and views of counsel; the presence of a governmental participant; and
19 the reaction of the class members to the proposed settlement.” *Staton*, 327 F.3d at
20 959 (citation and quotation marks omitted).

21 Moreover, at this preliminary stage and because class members will receive
22 an opportunity to be heard on the settlement, “a full fairness analysis is
23 unnecessary. . . .” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008)
24 (quotation marks omitted). Instead, preliminary approval and notice of the
25 settlement terms to the proposed class are appropriate where “[1] the proposed
26 settlement appears to be the product of serious, informed, non-collusive
27 negotiations, [2] has no obvious deficiencies, [3] does not improperly grant
28 preferential treatment to class representatives or segments of the class, and [4] falls

1 with the range of possible approval” Here, the proposed Settlement falls well
2 within the range of reasonableness.

3 **A. Arms-Length Negotiations**

4 The negotiations at the February 20, 2022 and April 28, 2023 mediations
5 were adversarial. Brown Decl. ¶ 18. There is no indication that the negotiations
6 were collusive or unfair to Class Members. This is particularly so given Plaintiffs
7 moved for class certification prior to the second mediation. Brown Decl., ¶ 18.

8 **B. The Risks, Complexity, Expense and Likely Duration of Further**
9 **Litigation, and the Amount Offered**

10 In considering the complexity, expense, and likely duration of the litigation,
11 courts weigh the benefits of the settlement against the expense and delay involved
12 in achieving an equivalent or even more favorable result at trial. *Lane v. Facebook,*
13 *Inc.*, 2010 U.S. Dist. LEXIS 24762, *19 (N.D. Cal. 2010); see *Kullar v. Foot*
14 *Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008) (The trial court “bears the
15 responsibility to ensure that the recovery represents a reasonable compromise,
16 given the magnitude and apparent merit of the claims being released, discounted
17 by the risks and expenses of attempting to establish and collect on those claims by
18 pursuing the litigation.”). However, “[j]udicial policy favors settlement in class
19 actions, as substantial resources can be saved by avoiding the time, cost, and rigors
20 of formal litigation.” *Clesceri v. Beach City Investigations & Protective Servs.*,
21 2011 U.S. Dist. LEXIS 11676, *22 (C.D. Cal. 2011).

22 Employment cases (including wage and hour cases) can be expensive and
23 time consuming to prosecute. That this is a class and representative action further
24 amplifies the economies of time, effort and expense achieved by this Settlement. \\
25 Based on a review of documentary evidence and data produced by Defendants in
26 the course of litigation and settlement negotiations, Class Counsel assessed the
27 potential value of the class claims being released by the proposed Settlement (and
28 explanation of the factors bearing on the amount of the compromise). See Brown

1 Decl., ¶¶ 21-29. Based on these calculations and factors the total exposure if
2 Plaintiffs were successful on all claims at trial is 11,616,605 (excluding penalties
3 under the PAGA). Brown Decl., ¶ 29. However, the realistic exposure for all
4 claims is \$407,585.20. *Id.* Accordingly, the Maximum Settlement Amount of
5 \$250,00.00 therefore represents approximately 61.34% of Plaintiffs' reasonably
6 forecasted recovery, while avoiding the further expense and risk of proceeding with
7 class certification and trial. *Id.* For the PAGA claim, based on the contested issues
8 in this case, further argument from Defendants that Plaintiffs PAGA Notice failed
9 to provide the necessary notice of claims alleged, and taking into the account the
10 ability of the Court to significantly discount any PAGA penalty award, Plaintiffs
11 discounted the PAGA exposure by 85%, resulting in an estimated realistic exposure
12 of \$91,230.00. Brown Decl., ¶ 30; *see also, Brown v. Ralphs Grocery Co.*, 28
13 Cal.App.5th 824, 835-87 (2018) (affirming a trial court demurrer order dismissing
14 a PAGA claim based on the PAGA Notice at issue not sufficiently alleging facts
15 and theories to support the alleged violations). The details of the exposure analysis
16 and discounts for the PAGA claim is further detailed in Brown Declaration. Brown
17 Decl., ¶¶ 21 - 30.

18 When weighed against the tremendous uncertainty of further litigation and
19 the potential for the Class to receive nothing or wait through years of litigation
20 and/or appeals, Class Members are far better served by the proposed Settlement
21 than further and protracted litigation especially given this Court already denied
22 Plaintiffs' first attempt Class Certification.

23 **C. The Likely Expense and Duration of Further Litigation**

24 If Plaintiffs continued to prosecute the claims rather than accept the
25 Settlement, they would have to engage in additional discovery disputes, file a
26 renewed motion for class certification, prepare and file potential dispositive
27 motions, engage in extensive trial preparation, and engage in years of appeals after
28 a ruling on a renewed motion for class certification and/or dispositive motions

1 and/or an eventual trial on the merits. Brown Decl., ¶ 32. Any one of these stages
2 could have stopped the Class Members from obtaining any recovery. *Id.*

3 **D. The Extent of Discovery Completed and the Stage of the**
4 **Proceedings**

5 Since filing the Nand Action on November 18, 2020, Class Counsel have
6 worked diligently to prosecute the class claims, including engaging in numerous
7 rounds of formal written discovery, taking and defending 22 depositions,
8 interviewing and obtaining declarations from numerous Class Members, engaging
9 in numerous lengthy discussions with Defendants' counsel, and pushing the case
10 towards two mediations, all of which ultimately yielded the instant Settlement.
11 Brown Decl., ¶ 33. In addition, Class Counsel worked through numerous hurdles
12 in this case, including an order denying class certification, Individual Settlement
13 Agreements that the Court may have held are enforceable after a contested motion
14 on the issue, and other arguments raised by Defendants about the merits of this
15 case. *Id.*

16 **E. The Experience and Views of Counsel**

17 There is no reason to doubt Class Counsel's experience, knowledge or
18 commitment. Class Counsel are highly experienced and knowledgeable regarding
19 complex federal and state wage and hour class actions like this one. Brown Decl.
20 ¶¶ 3 - 6; Surls Decl., ¶¶ 3 - 6; Kim Decl., ¶¶ 3 - 8; Han Decl., ¶¶ 3 - 8. Indeed, Class
21 Counsel has handled many wage and hour cases on behalf of employees alleging
22 claims just like those raised in this lawsuit. *Id.*

23 In sum, Class Counsel fully committed their resources to representing the
24 class in this case, have the skill and expertise to do it properly, and will continue to
25 do so. Class Counsel believes that the Settlement provides a fair recovery for the
26 Settlement Class without the need of prolonged litigation in the face of the risks of
27 prevailing and recovering any amounts. Brown Decl., ¶ 33. Accordingly, Class
28 Counsel urges the Court to approve the Settlement based on their prior experience

1 and investigation of the case.

2 **F. The Presence of a Governmental Participant**

3 The LWDA is a governmental participant in this action, as Plaintiffs have
4 brought PAGA claims. Plaintiffs have provided notice to the LWDA of the
5 Settlement as required by statute. See Exhibit H, Brown Decl., ¶ 18. Moreover,
6 Plaintiffs will provide notice to the LWDA if the Court grants final approval of the
7 proposed class and representative action settlement. Brown Decl., ¶ 18.

8 **VI. THE PROPOSED CLASS NOTICE SATISFIES DUE PROCESS**

9 **A. The Class Notice Satisfy Due Process and Meet All of the Elements**
10 **of FRCP Rule 23(c)(2)(B)**

11 Rule 23(c)(2)(B) provides that the Court must direct to class members the
12 best notice practicable under the circumstances, including individual notice to all
13 members who can be identified through reasonable effort. The notice should
14 describe: (1) the nature of the action; (2) the definition of the class certified; (3) the
15 class claims, issues, and/or defenses; (4) that a class member may enter an
16 appearance through counsel if the member so desires; (5) that the court will exclude
17 from the class any member who requests exclusion, stating when and how members
18 may elect to be excluded; and (6) the binding effect of a class judgment on class
19 members under Rule 23(c)(3).

20 The content of the Parties' proposed class action notice and Request for
21 Exclusion Form ("Notice Packet") herein fully complies with due process and Rule
22 23. The Notice Packet provides the definition of the class, describes the nature of
23 the action, and explains the procedure for contesting data used to calculate
24 estimated Participating Member Payments under the Settlement. *See* Exhibits B
25 and C; Brown Decl., ¶ 35. The Notice Packet specifies the date, time, and place of
26 the Final Approval hearing, and informs Class Members of their options upon
27 receiving the notice (i.e., opt out, object, dispute the number of weeks worked, or
28 do nothing). *Id.* It explains the scope of the release that will take effect unless Class

1 Members timely opt out of the Settlement. *Id.* The proposed notice also informs
2 the Settlement Class how the Settlement amount will be used to compensate Class
3 Counsel for the approved amount of costs and fees and the named Plaintiffs'
4 Enhancement Payments and General Release Payments. *Id.*

5 **B. The Notice Satisfies Due Process Because It Is Calculated to Give**
6 **All Settlement Class Members Notice Through Reasonable Effort**

7 For a class certified under Rule 23(b)(3), "the court must direct to class
8 members the best notice that is practicable under the circumstances, including
9 individual notice to all members who can be identified through reasonable effort."

10 Fed. R. Civ. P. 23(c)(2)(B). However, actual notice is not required. See *Silber v.*
11 *Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice by mail has been found by the
12 Supreme Court to be sufficient if the notice is "reasonably calculated . . . to apprise
13 interested parties of the pendency of the action and afford them an opportunity to
14 present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S.
15 306, 314 (1950); *accord Sullivan v. Am. Express Publ'g Corp.*, 2011 U.S. Dist.
16 LEXIS 70377 (C.D. Cal. 2011) (quoting *Mullane*). The Settlement Administrator
17 will use the United States Postal Service National Change of Address List to verify
18 the accuracy of all addresses before the initial mailing date to ensure that the Notice
19 Packet is sent to all Class Members at the addresses most likely to result in their
20 immediate receipt. Settlement, ¶ 3(D)(iii), 6. With respect to returned envelopes,
21 the Settlement Administrator will perform a routine skip-trace procedure to obtain
22 a current address and promptly re-mail, by First Class U.S. Mail, the Class Notice.
23 Settlement ¶ 6(C); *See also Rannis v. Recchia*, 380 F. App'x. 646, 650 (9th Cir.
24 2010) (finding due process was satisfied and class members whose notices were
25 returned as undeliverable were properly included in the class where the
26 administrator mailed notices to the last known address and demonstrated
27 "reasonable effort" by performing skip-traces); *Gonzalez v. Preferred Freezer*
28 *Servs. Lbf*, 2013 U.S. Dist. LEXIS 109930, *4-5 (C.D. Cal. 2013) (finding notice

1 constitutes “best notice practicable under the circumstances” where the
2 administrator performed skip-trace on all mail returned as undeliverable). Thus,
3 due process is satisfied.

4 Class Members who wish to challenge Defendants’ records will have the
5 opportunity to do so by submitting a written request to the Settlement
6 Administrator. Settlement ¶ 6(G)-(H). Class Members will have 60 days from the
7 date the Settlement Administrator mails the Notice Packet to request exclusion or
8 object to the Settlement. Settlement ¶ 6(E)-(F). This is sufficient time to give
9 Class Members the opportunity to comment on the Settlement. *Vasquez*, 670 F.
10 Supp. 2d at 1127 (approving 30-day notice period for class members to object,
11 request exclusion, or mail claims for settlement shares in wage and hour case).

12 **VII. CONCLUSION**

13 As set forth above, the proposed Settlement is fair, adequate, and well within
14 the range of reasonableness. Further, the Settlement Class satisfies all of the
15 elements of Rule 23 for conditional certification for settlement purposes. For these
16 reasons, the Court should grant the instant motion and order the Notice Packet to
17 be disseminated to Class Members.

18
19 Dated: June 30, 2023

VERUM LAW GROUP, APC

20
21 By: /s/ Sam Kim
22 Sam Kim
23 Yoonis Han
24 Attorneys for Plaintiffs SEVERO
25 JOHN HERNANDEZ, UMEET
26 NAND, KRISTOFER BARR, and
27 all other similarly situated persons

28 PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

1
2 Dated: June 30, 2023
3
4

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11 situated persons
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PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT